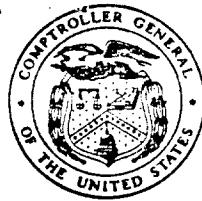


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DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548**FILE:** B-202313**DATE:** October 9, 1981**MATTER OF:** Sergeant Paul T. Longendyck, USA

DIGEST: An Army member's claim for travel expenses and a dislocation allowance for his wife's and child's travel to his new permanent duty station may not be allowed. Although such travel was mistakenly provided for in the member's orders, on the effective date of his orders (the date he was required to begin travel to his new duty station) his wife was on active duty in the Army and she was claiming their child as a dependent. Since a member may not claim a spouse, who is also a member entitled to basic pay, as a dependent for transportation expenses and since the wife was claiming the child as her dependent, the member had no dependents for transportation or dislocation allowance purposes.

This is in response to a request for an advance decision as to the entitlement of an Army member to travel allowances for his wife's and child's travel to his new duty station and a dislocation allowance. We find that he is not entitled to those allowances because on the effective date of his change-of-station orders he could not claim his wife and child as dependents since his wife was then also on active duty in the Army and she was claiming the child as her dependent.

This question was submitted for an advance decision by the Finance and Accounting Officer, 172d Infantry Brigade, Fort Richardson, Alaska. The Per Diem, Travel and Transportation Allowance Committee forwarded the request to us under Control No. 81-7.

Background

The question concerns Sergeant Paul T. Longendyck, USA, who by permanent change-of-station orders dated April 26, 1979, was reassigned from Fort Bliss, Texas, to Fort Richardson, Alaska, where he was assigned Government quarters. Sergeant Longendyck's orders required him to travel on June 18, 1979, and authorized deferred travel of his dependents. Sergeant Longendyck departed for Alaska on June 18, 1979, and arrived there on June 22, 1979.

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In May 1979, Sergeant Longendyck's wife, also a service member on active duty, took terminal leave from her permanent duty station at Fort Bliss and moved with the Longendyck's daughter to Claremont, New Hampshire, Mrs. Longendyck's home of record. This travel was apparently at Government expense since it was incident to her discharge from the Army effective June 20, 1979. She had claimed their daughter as a dependent while serving in the Army.

Mrs. Longendyck received confirmation on June 6 and 11, 1979, that she and her daughter were authorized travel to Alaska at Government expense. The wife and daughter thereafter traveled to Alaska from New Hampshire at Government expense, arriving there on July 28, 1979. The cost to the Government of their air fare was \$348.16.

Subsequently, the Finance and Accounting Officer in Alaska determined that Sergeant Longendyck was not entitled to the transportation of his wife and child to Alaska at Government expense because they were not his dependents on the effective date of his orders since his wife was then in the service and she was claiming their daughter as her dependent. For that reason the \$348.16 air fare was collected from Sergeant Longendyck and he was also denied payment of a dislocation allowance. Sergeant Longendyck has reclaimed the air fare and also claims a dislocation allowance on the basis that he thought he was entitled to move his family to Alaska at Government expense since travel authorizations had been issued for their move. The matter was submitted to us by the Finance and Accounting Officer.

Dependents' Travel

Section 406(a) of title 37, United States Code, authorizes the transportation at Government expense of the dependents of a service member who is ordered to make a permanent change of station. This entitlement to transportation is subject to such conditions and limitations, for such grades, ranks, and ratings, and to and from such locations as the Secretaries of the various uniformed services may prescribe. 37 U.S.C. § 406(c) (1976).

Chapter 7 of the Joint Travel Regulations, Volume 1 (1 JTR), establishes the limitations and conditions applicable to the authorization of travel of dependents at Government

expense under 37 U.S.C. § 406. Paragraph M7000-10 of those regulations states that a member is not entitled to transportation of dependents at Government expense when dependency does not exist on the effective date of the order directing the permanent change of station. Paragraph M7064-1 reiterates that limitation. See also paragraph M7006-1.

In accordance with 37 U.S.C. § 401, the definition of "dependent" in Appendix J, 1 JTR, includes a member's spouse and a member's unmarried legitimate child under the age of 21 years. However, 37 U.S.C. § 420 prohibits a member from claiming an increased allowance on account of a dependent who is entitled to basic pay under 37 U.S.C. § 204. In accordance with that statute, the definition of "dependent" in 1 JTR, Appendix J, states further that, for purposes of entitlement to transportation, "the spouse of a member who is also a member on active duty will not be considered a dependent." See also 53 Comp. Gen. 289 (1973). As to the child, only one member could claim it as a dependent for travel allowance purposes. See 54 Comp. Gen. 665, 667 (1975). Therefore, since Mrs. Longendyck was on active duty and entitled to basic pay until June 20, 1979, and she was claiming the Longendyck's daughter as a dependent during that time, Sergeant Longendyck could not claim them as dependents before June 21, 1979. Consequently, if the sergeant's orders were effective prior to that date, he was not entitled to transportation of his dependents at Government expense.

The term "effective date of orders" is also defined in 1 JTR, Appendix J. Appendix J provides that the effective date of orders in connection with a permanent change of station is the date on which the service member is required to commence travel from his old permanent duty station in order to arrive at his new duty station by the mode of transportation authorized and/or used. The date Sergeant Longendyck commenced travel was June 18, 1979, which was the "proceed date" specified in his orders and he arrived in Alaska on June 22, 1979, the "availability date" provided in his orders. Thus, his orders became effective on June 18, 1979, and, therefore, he had no dependents on the effective date of his orders and was not entitled to transportation of his dependents at Government expense. This is consistent with the general rule we have long applied that the statutory right to the transportation of dependents accrues and becomes fixed on the effective date of the orders directing a permanent change of station

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and does not extend to dependents who are acquired after the effective date of the orders. 35 Comp. Gen. 673 (1956); 35 Comp. Gen. 670 (1956).

Dislocation Allowance

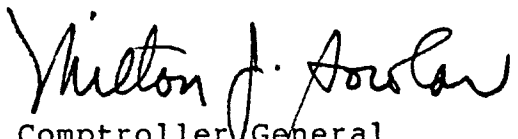
In connection with his permanent change of station to Alaska, Sergeant Longendyck also claims a dislocation allowance as a member with dependents.

The dislocation allowance is authorized by 37 U.S.C. § 407 under regulations prescribed by the Secretary concerned. Those regulations are prescribed in 1 JTR, chapter 9, paragraph M9001 of which defines a "member with dependents" for dislocation allowance entitlement purposes as a member who has dependents "entitled to transportation in connection with a permanent change of station." Since we have determined that Sergeant Longendyck had no dependents entitled to transportation in connection with his change of station to Alaska, he is not entitled to a dislocation allowance on that basis.

We also note that since he was assigned Government quarters in Alaska, Sergeant Longendyck would not be entitled to a dislocation allowance at the lower "without dependents" rate. 1 JTR paragraph M9003-1-2.

Conclusion

While it is unfortunate that Sergeant Longendyck was misinformed, in view of the applicable laws and regulations we are without authority to allow his claim. Accordingly, payment on the voucher presented is not authorized.


Acting Comptroller General
of the United States